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Men and Measures in the Law: Five Lectures Delivered in April, 1948, by Honorable Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey

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A Review of the Fourth Series of the William W. Cook Lectures on American Institutions

MEN AND MEASURES IN THE LAW

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By E. Blythe Stason

ALTHOUGH but recently established, the William W. Cook lectureship has already become a distinguished institution. Commencing in the year 1944–45 with a series of five lectures delivered by the late Professor Carl Lotus Becker, eminent historian of Cornell University, who spoke on "Freedom and Responsibility in the American Way of Life," the series has continued throughout the years to explore American institutions from the varying points of view of outstanding contemporary scholars in their respective fields. In 1945–46, the lectures were delivered by Professor Edward S. Corwin, political scientist from the faculty of Princeton University. "Total War and the Constitution" was his title. In 1946–47, the series continued in the language of the economist. Professor John Maurice Clark, of Columbia University, presented five lectures under the title "Alternative to Serfdom," reminiscent of the best seller, *The Road to Serfdom.* And this year the Hon. Arthur T. Vanderbilt, Chief Justice of the Supreme Court of New Jersey, gave five lectures, entitled "Men and Measures in the Law."

Thus, in four successive years, American institutions have been examined from four different points of view—that of the historian, the political scientist, the economist, and, now during the current year, that of a member of the legal profession. The committee in charge of the program would have found it difficult to choose lecturers of higher standing and wider repute in their respective fields and able to contribute more to the scholarly consideration of American institutions. Mention should be made of the fact that all of the lectures are published in due course and thus are made available to those who are unable to attend.

TO DISCUSS American legal institutions, no happier choice of a lecturer could have been made than was made when the invitation was extended to Justice Arthur T. Vanderbilt. Until he recently accepted

For four years now the Law School of the University has been sponsoring a course of lectures on American institutions provided for in the will of the late William W. Cook. E. BLYTHE STASON, Dean of the Law School, has been chairman of the committee in charge of this lecture program, and this summary of Justice Vanderbilt's lectures represents his personal interest in the series. Dean Stason, in addition to being a lawyer, is an engineer. He was born in Sioux City, Iowa, in 1891, and after his graduation from the University of Wisconsin in 1913, he received his B.S. degree from the Massachusetts Institute of Technology in 1916. He came to Michigan as Assistant Professor of Electrical Engineering in 1919. At this time he was also studying law and was graduated from Michigan Law School in 1922 with a degree of Juris Doctor. After two years of practice, he returned to the University in 1924 as Professor of Law. He was Provost of the University from 1938 to 1944 and became Dean of the Law School in 1939. He is the author of two textbooks—one on municipal corporations and one on administrative tribunals.

appointment to the Supreme Court of New Jersey, Judge Vanderbilt had, for over thirty-five years, been engaged in active practice of the law and, in addition, had been a participant in and keen observer of legal education. Since 1914 he had taught law at New York University Law School, and in 1943 he accepted the deanship of that institution. His special field of interest has been administrative law, a subject on which he has been a recognized authority for many years and on which he has recently, in collaboration with Carl McFarland, of the Washington, D.C., bar, published a classroom volume entitled *Cases and Materials on Administrative Law.*

Arthur Vanderbilt was born in New Jersey in 1888 and was educated at Wesleyan University, Middletown, Connecticut, where he received his Bachelor of Arts degree in 1910 and his Master of Arts degree in 1912. He acquired his legal education at Columbia University Law School, where he earned his Bachelor of Laws degree in 1913. He has been the recipient of several honorary degrees, including an LL.D. from Michigan in 1942.

Although he quickly became an exceedingly busy practicing lawyer, Mr. Vanderbilt was one of those rare members of the bar to whom legal scholarship was a source of intense personal satisfaction. Throughout the years of his active practice he continued to expand his horizons, not only in the law but also in related fields of learning. Among other ventures, he has explored Anglo-American legal history widely and deeply. A great admirer and student of Lord Mansfield, whose contributions as a judge to the growth of the substantive common law made him one of the great figures of the English bench, Arthur Vanderbilt has himself taken a leading part in many movements pointing toward improvement in administration of justice in the United States. His knowledge of the history and growth of reform movements in Anglo-American law has stood him in good stead, and the list of professional reform activities in which he has engaged mark him as one of America's leading contributors to the advance of the law.

Long an active member of the American Bar Association and a participant in its top councils, Mr. Vanderbilt became president of that organization in 1937. As president he was largely responsible for the initiation of the activities which have subsequently resulted in American Bar Association sponsorship of several notable improvements in judicial and administrative procedure. Among other activities he served from 1933 to 1937 as chairman of the National Conference of Judicial Councils; later, as chairman of the United States Attorney General's Committee collaborating with the Committee of Senior Circuit Judges in drafting the highly significant act for the establishment of the Administrative Office of the United States Courts (1938–39); also, as a member of the United States Attorney General's Committee on Administrative Procedure, which committee in 1941 presented its important report on federal administrative law; still later, in 1941, as chairman of the Advisory Committee appointed by the United States Supreme Court to draft rules of criminal procedure for the federal courts; and again, in 1946, as chairman of the Advisory Commission of the War Department on Military Justice.

In addition, for years Mr. Vanderbilt served as a leading member of the New Jersey State Constitution Revision Commission. Indeed, for seventeen long years he led a virtual crusade in his home state, seeking revision of the constitution and rehabilitation of the judicial establishment. The New Jersey court system not only was archaic in structure, but due to adverse political influences, it had been prevented from achieving anything resembling satisfactory results in the administration of justice. Finally, in 1946 a revision of the

judiciary articles of the New Jersey constitution was brought about, and the newly created Supreme Court is now set up in such a manner as to facilitate development of a model state judicial establishment.

In consequence of his unremitting efforts in this movement and his high qualifications for judicial office, when the time came for the making of appointments to the newly constituted Supreme Court, Mr. Vanderbilt was urged as a public duty to accept the chief justiceship. This he did, and during the present year he has relinquished his extensive and lucrative active practice of the law, his deanship of the New York University Law School, and his many other activities of a professional character, to respond to the call of New Jersey to accept responsibility for the reorganization of the administration of justice in his native state.

All of the foregoing professional activities—at the bar, in law school classrooms, in exploration of Anglo-American legal history, and in public councils—have combined to bring to this year's William W. Cook Lectureship on American Institutions a wealth of experience and a ripeness of judgment of inestimable value. As a result the five lectures of the 1948 series struck a responsive chord in the audience composed largely but by no means exclusively of law students and persons interested in the related social science disciplines. The spoken word of a master is always impressive, and these lectures were of that kind.

Justice Vanderbilt's first lecture dealt with "The Law in the Books," to use his own subtitle; the second, with "Law in Action" and "Law in the Law Schools"; the third, with "The Expansion of Substantive Law"; the fourth, with "Procedure," characterized as "the stumbling block"; and the final lecture, also on procedure, covering "Suggestions for a Program." The entire series might well be epitomized as "The Growth and Reform of Anglo-American Law and Administration of Justice and a Program for Carrying on in the Future." We may now examine briefly each of the five subtitles.

IN HIS first lecture Justice Vanderbilt discussed the subject "The Law in the Books." Anyone with even a slight familiarity with the literature of the law understands what he meant when he spoke of the "sheer bulk" of legal literature. He referred to the "mountain ranges of our reported judicial decisions looming seemingly impenetrable and insurmountable." Not only judicial decisions, but statutes, administrative rules and regulations, decisions of administrative boards and commissions, texts and treatises, law reviews and periodicals, citators and form books, encyclopedias and "annotated series," the tons and tons of digests and secondary materials of various kinds, all add up to a tremendous load on the floors of law libraries. About thirty thousand volumes are necessary nowadays to set up a good working law library. At the University of Michigan there are upwards of two hundred thousand volumes available for the worker in the legal vineyard.

And the end is not yet; as the lecturer said: "The mountains are still growing." He pointed out that in the time of Coke and Bacon (circa 1600) there were, in all, only about five thousand reported English cases. By the time of the American Revolution the number had grown to ten thousand. In 1940 the total had reached 1,750,000, and by the thousands they are still being handed down from the bench.

However, as the Justice indicated, the skill of "legal mechanics" has been turned loose on the vast aggregation of legal materials, and in consequence, by proper use of available encyclopedias, annotated series, digests, and other mechanical aids, it is not too difficult for the informed and experienced lawyer today to find his way through the modern law library. To quote:

> The seemingly impassable mountains have been surveyed, and their topography plotted, so that any well-informed traveler may find his way,

given sufficient physical strength and mental resolution. . . . The plain truth is that our method of judicial decision is the method of thinking instinctively used by the Anglo-American lawyer. He is as much at home among the reported cases as he is ill at ease with statutes until they have been judicially construed. He takes naturally to the empirical reasoning of judges, proceeding from case to case by a process of inference often seemingly deductive but more often, in fact, inductive in nature. He is not satisfied to take the conclusions of the judges without weighing their reasoning, good or bad, and noting in each opinion what is old and what is new. He likes their habit—and his—of a wide ranging search for authorities.

However, although the lawyer is able to find his way through the mass of legal materials to obtain an answer to the problem immediately confronting him, it is "on the legal scholar that the tremendous burden of our case law falls in his attempt to master comprehensively any large part of the field. So true is this that it must be confessed that encyclopedic legal minds seem to be disappearing, and that knowledge of the law as a system is becoming increasingly rare."

Having exposed to view the "sheer bulk" of case law, the lecturer then proceeded to discuss the tremendous contemporary growth of legislation and administrative law, both of which serve to add enormously to the bulk of printed legal materials. "In 1946 Congress and the legislatures of eight states in regular session and six states in special session passed 10,024 pages of statutes. In 1947 Congress and the legislatures of forty-four states in regular session and four states in special session enacted 46,677 pages of statute law, a total for the biennium of 1946–1947 of 56,701 pages." These statutes, of course, merely supplement the existing codes and statute books which altogether fill some "274 bulky volumes aggregating 267,777 pages." To all of this must be added the tremendous load of modern administrative law, encountered both in the form of administrative regulations and in countless of thousands of administrative decisions handed down in quasi-judicial proceedings.

And then Justice Vanderbilt discussed the texts and treatises and other contributions of legal scholars. Mention was made of the interpretive genius of Kent, Story, Wigmore, Williston, and Pound. "The history of American law," said the lecturer, "might well be traced in terms of its great textbooks. Thus the biography of the law of contracts in America is summarized in Parsons, Langdell, and Williston . . . similarly the law of evidence revolves around the names, successively, of Greenleaf, Thayer, and Wigmore." These are masters of legal literature on which every lawyer relies.

Next the discussion was directed toward the related social science materials and the difficulties encountered in using them.

One of the great problems of the practicing lawyer, the legal scholar, and even the law student, with respect to the social sciences and the study of the spirit of the age and the social trends is to discover where they may get their over-all view of these fields, and how they may keep their knowledge of the changing social scene up to date. Nowhere has this material been coordinated for their use, much less evaluated. As novices in this field we need evaluation quite as much as cataloguing.

The lawyer of today must range beyond the limits of technical legal materials, and he frequently finds his sources in the works of economists, political scientists, sociologists, and other social scientists. But in these fields he is handicapped by the inadequacies of law libraries and the unavailability of means of exploring the related bypaths. The law in books, concludes the lecturer, is indeed voluminous and in many respects superb, yet there is room for improvement.

THEN we come to the second lecture, dealing first with "The Law in Action," and then with "The Law in the Law Schools." The lawyer, who is primarily responsible for the law in action, was examined critically, and he did not come

through unscathed. There are essential professional areas that he neglects. As stated by Justice Vanderbilt:

> By and large the modern lawyer is . . . an expert in the substantive law of our business civilization. This, incidentally, has been the major field of his studies in the law school for well over half a century. He has not ordinarily taken the time to be concerned with the organization of the courts, or how the judges or jurors are chosen, or whether or not the procedure and practice is simple and flexible. . . . Quite unmindful of the general dissatisfaction of the public with the administration of justice in the courts and by the administrative agencies, he relies, for the time being at least, on his knowledge of law in action, leaving it to others to bring about obviously desirable changes, if indeed it be possible—which he may be inclined to doubt—to overcome the inertia of the status quo.

Reference was then made to the aversion shown by the average practicing lawyer toward the practice of criminal law. Indeed, it is a fact that most lawyers will not try criminal cases if it is possible for them to avoid it. "Quite different, of course, is the attitude of the leaders of the English and Canadian bars." They will take a brief in a criminal matter quite as readily as in a civil cause. In Justice Vanderbilt's words:

> It is difficult to see how any member of the bar can longer afford to adopt a remote and lofty attitude toward the vexing problems of the administration of the criminal law. Should we not ponder the fact that the English administration of the criminal law is concededly superior to our own, and raise with ourselves the question as to whether this may not be accounted for in part, at least, by the better attitude of the English bar toward the criminal law.

Next the Justice dwelt on "the greatest default of the legal profession today—a lack of a sense of individual responsibility . . . as a leader of public opinion in his own community." As he said:

> No class in our society has been more generous with its time and the use of its capacity for leadership in social enterprises than the lawyers. They are always to be found in key positions on the boards of colleges and hospitals and in the forefront of community drives. But too many of the ablest of them have shrunk from public office holding, from party leadership, and from posts of influence in the formation of public opinion, and even from active participation in the affairs of the organized bar.

This is a tragedy, for it deprives the country of the leadership of many of its ablest citizens. There is a duty to the public that should be fulfilled.

THEN the lecturer turned from "law in action" to "law in the law schools." "Taught law is tough law," as Maitland remarked. "Untaught law," said Justice Vanderbilt, "is withering law—decaying law. Many of the shortcomings of the practicing lawyer are, in truth, foreshadowed in the law schools." The "shortcomings" were thereupon sketched constructively and sympathetically in the light of the lecturer's ripe experience both in legal education and at the bar. Insufficient instruction in procedure and practice, in criminal law and the administration thereof, in legislation, bill drafting and statutory construction, in administrative law—all can be charged as faults of contemporary legal education. "Indeed," said Justice Vanderbilt, "constitutional law, along with other branches of public law, is in danger of becoming the exclusive property of political scientists. . . . So little has international law been taught in the law schools and so unfamiliar with it was the bar of the entire country" that during World War II the nation was seriously handicapped by the almost total lack of legally trained specialists in that important legal field. Moreover, "the civil law is deemed an exotic and not a staple in almost every institution of legal learning. The plain truth is that, from the time of Langdell on, private substantive law, particularly commercial law and the law of property, have dominated the practice of law, the bar examinations, and law school study."

Justice Vanderbilt is not unaware of the difficulties that confront the curriculum makers of the law schools. How can all of the necessaries be taught in the three short years available for the training of a prospective member of the bar? Those of us engaged in legal education have not yet found the answer.

Then the lecturer turned his attention to prelegal study, and particularly to education in the social sciences, so necessary as background knowledge for the intending lawyer. Said he:

> It is fantastic to think of our students understanding the reasons of policy which dictate so many of the rules of law if they do not know the economic, political, social, and cultural background of these rules. The kind of teaching of the social sciences that I have been contending for requires a high degree of scholarship and great pedagogic skill. It is vain to imagine that such teaching will come spontaneously. After surveying the record of the activities of the Association of Law Schools with respect to prelegal education, including their recent refusal to extend the entrance requirements from two to three years of college work, I cannot avoid the conclusion that they have lamentably failed to appreciate their responsibility for the educational qualifications of their students, and I venture to prophesy that if they do not themselves attend to the matter, others will.

Justice Vanderbilt recognizes that the really effective leader at the bar must be trained both broadly and deeply, not only in the techniques of legal craftsmanship, but also in the sociological, economic, and political background upon which the law rests. Again, many of us on law school faculties realize our shortcomings only too painfully. We only wish that we could discover the ready solution of the difficulty.

We may now turn to the third of the lectures, entitled "The Expansion of Substantive Law." It was an extraordinarily effective epitome of Anglo-American legal history with especial emphasis on the principal movements in substantive law reform. The outstanding figures were brought forth in review, from Edward I, King of England (1272–1307), often called the English Justinian, to Franklin D. Roosevelt, who, although he was not directly a "lawmaker," was given credit for being a major force in the development of the New Deal additions to the corpus juris. The great judges were referred to and their achievements described—Coke, Mansfield, and Stowell in England, along with the giants of equity, Bacon, Nottingham, Harwicke, and Eldon. These in English legal history, together with Marshall, Kent, and Story in the United States, were great leaders in the profession and were large contributors to the growth of the substantive law. Said Justice Vanderbilt:

> Lord Mansfield (1705–1788) has fascinated me since the first day I encountered him in my law school course on contracts. I had more or less successfully navigated offer and acceptance, and without having been asked to accept too much that to my youthful mind seemed irrational. But as I traversed the dismal swamp of consideration, I felt as if I had been left to myself without a map or compass or means of communication with the strange forms around me. When at length I turned the page to *Pillans* v. *Van Mierop* (one of Lord Mansfield's opinions) I felt that I was in the presence not only of a great mind who, fortunately for me, spoke a modern language, but of a genuine friend. Why shouldn't a promise in writing, intended as a business transaction, be good regardless of consideration? It made sense to me, and it accorded with the civil law.

Nevertheless Lord Mansfield's doctrine of consideration was not accepted. He was overruled by the House of Lords. However, notwithstanding the loss of this skirmish, Lord Mansfield was a gigantic figure on the bench, and extended attention was devoted by the lecturer to his career and achievements. Born in 1705 as William Murray, the younger son of a poor Scottish peer, educated in Christ Church, Oxford, a member of Lincoln's Inn, called to the bar in 1730, elevated to the bench in 1756, he was Chief Justice of England for thirty-two

years. His greatest achievement on the substantive side of the law was the reception of the law merchant into the body of the common law. This he was able to accomplish because of his broad knowledge of continental authorities in his field, based on his studies which began during his student days at Lincoln's Inn. Then, too, in the field of contract law, Lord Mansfield made one of his great contributions. He became the father of quasi-contract by initiating the development of *indebitatus assumpsit* to cover a wide variety of cases in which the plaintiff is allowed recovery on the ground of unjust enrichment of the defendant. Indeed, as Justice Vanderbilt said, "Through him the spirit of equity entered much of the common law."

In this third lecture the Justice discussed at length the great era of socio-legal reform that commenced in England in 1832. The great figure was Jeremy Bentham, who was, more than any other man, the inspiring genius behind the Reform Act of 1832 and subsequent reforms in English social legislation. From the time of the publication anonymously in 1776 of his *Fragment of Government* down to the time of his death, Bentham strove to induce his countrymen to move down the path of law reform. As Justice Vanderbilt said, "Bentham was the guiding spirit of his age," and the great revolution in English statute law can very largely be attributed to him—the laws concerning factories, poor relief, municipal corporations, prisons, public health, as well as civil procedure and criminal law, may all be laid on his doorstep.

Turning then to this country, Justice Vanderbilt reviewed the development of socio-legal legislation in the United States. It began even earlier than the Reform Act of 1832 in England. Indeed, the period closely following the American Revolution was studded with law reform. The Bill of Rights of the Federal Constitution was drafted and ratified in 1791. The abolition of slavery in the northern states took place from 1781 to 1804. Due to the influence of Thomas Jefferson, free public education was instituted in Pennsylvania in 1823 and gradually spread throughout the nation. Following the Civil War railroad legislation sought to eliminate the evils of transportation monopoly. Tariff legislation was accompanied by labor and immigration legislation. Conservation legislation, seeking to put an end to the wasting of natural resources, gained a foothold toward the end of the nineteenth century. Then came the "Square Deal" of Theodore Roosevelt, the "New Freedom" of Woodrow Wilson, and finally, the "New Deal" of Franklin D. Roosevelt. All of these progressive programs of social legislation expanded the substantive law of the land. All were given their fair share of attention in this third lecture in the series.

IN THE fourth lecture, Justice Vanderbilt turned his attention to the "stumbling block" in administration of justice, namely judicial procedure. As he said:

> Every law student knows that the great principles of common law have been evolved out of our procedural law. Every practicing lawyer is well aware how rules of procedure may affect a client's substantial rights and even his personal liberty . . . and every citizen realizes that it is to the courts, in the last analysis, that he must turn for protection of his rights through rules of procedure. It is of no use to him to have rights that the law books say are his if he cannot in fact vindicate them in court because of procedural obstacles.

Then the lecturer proceeded to point out how difficult it has been throughout the years to achieve improvement in procedural law—in the administration of justice. The exponents of the existing procedural order are always in an "entrenched position," and either because of "selfish interests or mere inertia they make formidable opponents." The lecturer sketched with care and accuracy the course and history of the principal procedural reforms in England and in the

United States. His long interest in and connection with procedural reform movements of recent years in the United States qualified him to speak with especial authority on this phase of his subject.

So far as English procedural reform is concerned, we start with the Statute of 1833. That measure authorized the judges to adopt procedural rules such as they might think expedient. As a result, the so-called Hilary Rules were adopted at the Hilary term in 1834. Unluckily, they failed to improve English court procedure, primarily because of the influence of Baron Parke, a brilliant judge who unfortunately was so steeped in and fond of the intricacies of the common law that instead of following the reform spirit of the statute, he actually made use of the powers therein given to magnify the technicalities and further complicate the administration of justice. So it was not until the passage of the Judicature Act of 1873 that real reform of administrative procedure commenced in England. All of this English legal history was carefully and interestingly developed in the fourth lecture.

It was with the reform of administration of justice in this country, however, that Justice Vanderbilt spoke with the authority of an active participant. He first discussed some of the earlier American history—for example the effect of the Jacksonian era, dedicated to the proposition that all men are both *created* equal and *are* equal. He pointed out the vicious effect of the assumption of dead-level equality when applied to the administration of justice.

> The judge was reduced to the position of a mere moderator, for was not every juror the equal of the judge? The judge's common law power to interrogate witnesses was accordingly taken away. He was also stripped of his common law power to comment on the evidence in his charge to the jury. He was denied his common law right to charge the jury in his own language, being confined to reading to the jury such instructions as were submitted to him by counsel in the case. . . . The frontier spirit dominated most of the courts, and trials were conducted on the theory that the administration of justice was a sporting event, at which the public was entitled to a good show, regardless of intrinsic rights or abstract justice.

Then the lecturer sketched the course of reform in administration of justice in this country. The first significant move was the Field Code. Again to quote:

> The first step out of the judicial mire toward any real improvement in the work of the courts dealt, as one would suspect, with matters of procedure. The Field Code . . . gave the judges and the lawyers of the time a fresh start in dealing with the remedial law. It swept aside fictions and the use of foreign tongues. It abolished the forms of action and it merged law and equity.

This Field Code was adopted in New York in 1848 and was subsequently adopted by the legislatures in nearly half of the states of the Union. It constituted a remarkable step in advance in the administration of justice. It is still a potent motivating influence. Quite recently many of its features have been incorporated into the federal court system in the form of the Federal Rules of 1937.

Next, Justice Vanderbilt outlined the extensive and successful efforts of the American Bar Association in support of a continuing program for the improvement of court procedure. In 1906 a young man from Nebraska, Roscoe Pound, later the great dean of Harvard Law School, then only thirty-five years of age, delivered an address at an American Bar Association meeting on "The Causes of Popular Dissatisfaction with the Administration of Justice." This Justice Vanderbilt characterized as a "classic of American law." He said: "It should be required reading once each year for every practicing lawyer on the day he returns to his office from his summer vacation." In any event it reached "the soul of the profession," and the American Bar Association embarked on its program. Justice Vanderbilt sketched the uphill struggle

of the Committee on Uniform Judicial Procedure, attempting to obtain, against Senator Walsh's opposition, the adoption of reformed rules applicable to the trial of civil cases in federal courts. Credit was given to Attorney General Homer S. Cummings for the ultimate adoption of the law that authorized the Supreme Court to proceed to formulate the rules that were finally adopted in 1937.

Justice Vanderbilt also referred to the contributions of the American Judicature Society and, particularly, to the *Journal* of that society, edited for so many years by Herbert Harley, of Ann Arbor, Michigan. This publication, the Justice said, "agitated for judicial reform for upwards of a third of a century with rare professional insight and in the best tradition of the English reviews that brought about the passage of the Judicature Acts. There is not a jurisdiction in the country in which its influence has not been felt, and without its constant aid I fear there would be many a state in which the lighted torch would long since have fallen to the ground uncared for."

Finally, in this survey of procedural reform, Justice Vanderbilt described and evaluated such ventures as the work of the Judicial Section of the American Bar Association under the masterful chairmanship of Judge John J. Parker, senior judge of the United States Circuit Court of Appeals; the notable fifty-seven recommendations dealing with traffic courts adopted by the House of Delegates of the American Bar Association in 1940 and now well on their way to incorporation in the administration of justice throughout the country; the work of the Attorney General's Committee on Administrative Procedure and the support and sponsorship by the American Bar Association of the so-called Administrative Procedure Act of 1946; the Federal Rules of Criminal Procedure; and the act providing for the Administrative Office of the United States Courts. All of these were portrayed in this fourth lecture as notable steps in the reform of administration of justice in the United States, and, indeed, they constitute a brilliant panorama of achievement in the evolution of Anglo-American procedural law.

THE final and concluding lecture of the series, entitled "Suggestions for a Program," also dealt with procedure, the stumbling block in the pathway of reform of law. The lecturer set forth the ripe conclusions which he has reached after a generation of personal experience with reform movements. There are many things yet to be done. For example, provision should be made relieving judges from the handling of administrative details of their courts. The Justice is enthusiastic about the federal plan of having an administrative office in charge of the business of running the judicial department. Then measures need to be taken to assure the appointment to the bench of the best qualified personnel—something not always encountered at present. Appointment, rather than election by popular vote, is the preferable means of selection. Continuing, the Justice stated:

> . . . the question of tenure is very important. The ablest men at the bar cannot be induced to forsake their practices, especially if they are in their most successful years, without some assurance of ample tenure. The risks attendant upon reappointment or, worse yet, upon re-election, have deprived the bench of many a judge who otherwise would have been a credit to it.

He further commented:

> Equally important to the litigant as the matter of selection of judges is the selection of jurors. Unfortunately in some jurisdictions the politicians have regarded it as equally important to their welfare. It will do little good for a litigant to have his case tried by competent counsel before an impartial and experienced judge if the verdict is to be rendered by a jury that is either unintelligent or dishonest.

And thereupon the lecturer offered some constructive suggestions concerning the

improvement of administration of justice in this particular.

The law schools were then offered some helpful suggestions in planning for the future. Indeed, the law schools should discover and inaugurate virtually a new concept of procedure study. Said Justice Vanderbilt: "We need to acquire the point of view that procedure comprehends everything which the lawyer has to do about a case, from the time that he is brought into it." The Justice feels that greater opportunity should be afforded in the law schools for the analysis of facts as distinguished from legal principles, for the presentation of the facts in pleadings, for realizing the possibilities of pretrial procedure, for mastery of the processes of proof as distinguished from learning the mere exclusionary rules of evidence, for acquiring the art of stating a case and the art of drafting a brief on appeal. These were outlined as the task of legal education, in order that the future members of the bar may be better able to represent their clients in litigious proceedings.

Then the conclusion:

> I turn to one final point in the general program of judicial reform, and that is the problem of our local courts of criminal jurisdiction, the police court, by whatever name it is called, and the traffic court in the city and the justice of the peace in the country. I have no hesitancy in saying that just as the trial courts are far more important to the welfare of the country than the appellate courts, so the local courts of criminal jurisdiction are of more importance than our appellate courts and our general trial courts together.

The Justice urged modernization and reorganization of these local tribunals as well as the continuing supervision of their activities as an integral part of our judicial system, to the end that we may make them effective instruments of crime control as well as agencies promoting respect for the law.

THIS, then, was "Men and Measures in the Law," the fourth series of William W. Cook Lectures on American Institutions. The reviewer wishes to conclude by saying that the lectures, soon to be available in a printed volume, should be "must" reading for all who are genuinely interested in law and administration of justice. Members of the bar should read it to take advantage of the ripe experience of one of the country's great leaders in law reform. Students of the law should read it, because, when they become the leaders of the future, they will have derived valuable information and inspiration from its pages. These lectures make a real contribution to advance in administration of justice—one of the American institutions that William W. Cook was interested in preserving.

PRAYER

O Lord,
Help me to have
The courage of the grass,
To grow, wither, and die without
Complaint.

CHARLES F. MADDEN